

REFERENCE TITLE: land divisions; water requirements

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2144

Introduced by
Representatives Ableser: Campbell CH

AN ACT

AMENDING SECTIONS 9-463.01 AND 11-809, ARIZONA REVISED STATUTES; RELATING TO
MUNICIPAL AND COUNTY LAND DIVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-463.01, Arizona Revised Statutes, is amended to
3 read:

4 9-463.01. Subdivision authority

5 A. Pursuant to this article, the legislative body of every
6 municipality shall regulate the subdivision of all lands within its corporate
7 limits.

8 B. The legislative body of a municipality shall exercise the authority
9 granted in subsection A of this section by ordinance prescribing:

10 1. Procedures to be followed in the preparation, submission, review
11 and approval or rejection of all final plats.

12 2. Standards governing the design of subdivision plats.

13 3. Minimum requirements and standards for the installation of
14 subdivision streets, sewer and water utilities and improvements as a
15 condition of final plat approval.

16 C. By ordinance, the legislative body of any municipality shall:

17 1. Require the preparation, submission and approval of a preliminary
18 plat as a condition precedent to submission of a final plat.

19 2. Establish the procedures to be followed in the preparation,
20 submission, review and approval of preliminary plats.

21 3. Make requirements as to the form and content of preliminary plats.

22 4. Either determine that certain lands may not be subdivided, by
23 reason of adverse topography, periodic inundation, adverse soils, subsidence
24 of the earth's surface, high water table, lack of water or other natural or
25 man-made hazard to life or property, or control the lot size, establish
26 special grading and drainage requirements and impose other regulations deemed
27 reasonable and necessary for the public health, safety or general welfare on
28 any lands to be subdivided affected by such characteristics. **NOTWITHSTANDING**
29 **ANY OTHER LAW, THE LEGISLATIVE BODY OF A MUNICIPALITY SHALL NOT ALLOW LAND**
30 **DIVISIONS OF FIVE OR FEWER LOTS, TRACTS OR PARCELS WITHOUT A WATER SUPPLY AS**
31 **DETERMINED PURSUANT TO SUBSECTIONS I THROUGH Q OF THIS SECTION.**

32 5. Require payment of a proper and reasonable fee by the subdivider
33 based upon the number of lots or parcels on the surface of the land to defray
34 municipal costs of plat review and site inspection.

35 6. Require the dedication of public streets, sewer and water utility
36 easements or rights-of-way, within the proposed subdivision.

37 7. Require the preparation and submission of acceptable engineering
38 plans and specifications for the installation of required street, sewer,
39 electric and water utilities, drainage, flood control, adequacy of water and
40 improvements as a condition precedent to recordation of an approved final
41 plat.

42 8. Require the posting of performance bonds, assurances or such other
43 security as may be appropriate and necessary to assure the installation of
44 required street, sewer, electric and water utilities, drainage, flood control

1 and improvements meeting established minimum standards of design and
2 construction.

3 D. The legislative body of any municipality may require by ordinance
4 that land areas within a subdivision be reserved for parks, recreational
5 facilities, school sites and fire stations subject to the following
6 conditions:

7 1. The requirement may only be made upon preliminary plats filed at
8 least thirty days after the adoption of a general or specific plan affecting
9 the land area to be reserved.

10 2. The required reservations are in accordance with definite
11 principles and standards adopted by the legislative body.

12 3. The land area reserved shall be of such a size and shape as to
13 permit the remainder of the land area of the subdivision within which the
14 reservation is located to develop in an orderly and efficient manner.

15 4. The land area reserved shall be in such multiples of streets and
16 parcels as to permit an efficient division of the reserved area in the event
17 that it is not acquired within the prescribed period.

18 E. The public agency for whose benefit an area has been reserved shall
19 have a period of one year after recording the final subdivision plat to enter
20 into an agreement to acquire such reserved land area. The purchase price
21 shall be the fair market value of the reserved land area at the time of the
22 filing of the preliminary subdivision plat plus the taxes against such
23 reserved area from the date of the reservation and any other costs incurred
24 by the subdivider in the maintenance of such reserved area, including the
25 interest cost incurred on any loan covering such reserved area.

26 F. If the public agency for whose benefit an area has been reserved
27 does not exercise the reservation agreement set forth in subsection E of this
28 section within such one year period or such extended period as may be
29 mutually agreed upon by such public agency and the subdivider, the
30 reservation of such area shall terminate.

31 G. The legislative body of every municipality shall comply with this
32 article and applicable state statutes pertaining to the hearing, approval or
33 rejection, and recordation of:

34 1. Final subdivision plats.

35 2. Plats filed for the purpose of reverting to acreage of land
36 previously subdivided.

37 3. Plats filed for the purpose of vacating streets or easements
38 previously dedicated to the public.

39 4. Plats filed for the purpose of vacating or redescribing lot or
40 parcel boundaries previously recorded.

41 H. Approval of every preliminary and final plat by a legislative body
42 is conditioned upon compliance by the subdivider with:

43 1. Rules as may be established by the department of transportation
44 relating to provisions for the safety of entrance upon and departure from
45 abutting state primary highways.

1 2. Rules as may be established by a county flood control district
2 relating to the construction or prevention of construction of streets in land
3 established as being subject to periodic inundation.

4 3. Rules as may be established by the department of health services or
5 a county health department relating to the provision of domestic water supply
6 and sanitary sewage disposal.

7 I. If the subdivision is comprised of subdivided lands, as defined in
8 section 32-2101, and is within an active management area, as defined in
9 section 45-402, the final plat shall not be approved unless it is accompanied
10 by a certificate of assured water supply issued by the director of water
11 resources, or unless the subdivider has obtained a written commitment of
12 water service for the subdivision from a city, town or private water company
13 designated as having an assured water supply by the director of water
14 resources pursuant to section 45-576 or is exempt from the requirement
15 pursuant to section 45-576. The legislative body of the municipality shall
16 note on the face of the final plat that a certificate of assured water supply
17 has been submitted with the plat or that the subdivider has obtained a
18 written commitment of water service for the proposed subdivision from a city,
19 town or private water company designated as having an assured water supply,
20 pursuant to section 45-576, or is exempt from the requirement pursuant to
21 section 45-576.

22 J. Except as provided in subsections K and P of this section, if the
23 subdivision is composed of subdivided lands as defined in section 32-2101
24 outside of an active management area and the director of water resources has
25 given written notice to the municipality pursuant to section 45-108,
26 subsection H, the final plat shall not be approved unless one of the
27 following applies:

28 1. The director of water resources has determined that there is an
29 adequate water supply for the subdivision pursuant to section 45-108 and the
30 subdivider has included the report with the plat.

31 2. The subdivider has obtained a written commitment of water service
32 for the subdivision from a city, town or private water company designated as
33 having an adequate water supply by the director of water resources pursuant
34 to section 45-108.

35 K. The legislative body of a municipality that has received written
36 notice from the director of water resources pursuant to section 45-108,
37 subsection H or that has adopted an ordinance pursuant to subsection O of
38 this section may provide by ordinance an exemption from the requirement in
39 subsection J or O of this section for a subdivision that the director of
40 water resources has determined will have an inadequate water supply because
41 the water supply will be transported to the subdivision by motor vehicle or
42 train if all of the following apply:

43 1. The legislative body determines that there is no feasible
44 alternative water supply for the subdivision and that the transportation of

1 water to the subdivision will not constitute a significant risk to the health
2 and safety of the residents of the subdivision.

3 2. If the water to be transported to the subdivision will be withdrawn
4 or diverted in the service area of a municipal provider as defined in section
5 45-561, the municipal provider has consented to the withdrawal or diversion.

6 3. If the water to be transported is groundwater, the transportation
7 complies with the provisions governing the transportation of groundwater in
8 title 45, chapter 2, article 8.

9 4. The transportation of water to the subdivision meets any additional
10 conditions imposed by the legislative body.

11 L. A municipality that adopts the exemption authorized by subsection K
12 of this section shall give written notice of the adoption of the exemption,
13 including a certified copy of the ordinance containing the exemption, to the
14 director of water resources, the director of environmental quality and the
15 state real estate commissioner. If the municipality later rescinds the
16 exemption, the municipality shall give written notice of the rescission to
17 the director of water resources, the director of environmental quality and
18 the state real estate commissioner. A municipality that rescinds an
19 exemption adopted pursuant to subsection K of this section shall not readopt
20 the exemption for at least five years after the rescission becomes effective.

21 M. If the legislative body of a municipality approves a subdivision
22 plat pursuant to subsection J, paragraph 1 or 2 or subsection O of this
23 section, the legislative body shall note on the face of the plat that the
24 director of water resources has reported that the subdivision has an adequate
25 water supply or that the subdivider has obtained a commitment of water
26 service for the proposed subdivision from a city, town or private water
27 company designated as having an adequate water supply pursuant to section
28 45-108.

29 N. If the legislative body of a municipality approves a subdivision
30 plat pursuant to an exemption authorized by subsection K of this section or
31 granted by the director of water resources pursuant to section 45-108.02 or
32 45-108.03:

33 1. The legislative body shall give written notice of the approval to
34 the director of water resources and the director of environmental quality.

35 2. The legislative body shall include on the face of the plat a
36 statement that the director of water resources has determined that the water
37 supply for the subdivision is inadequate and a statement describing the
38 exemption under which the plat was approved, including a statement that the
39 legislative body or the director of water resources, whichever applies, has
40 determined that the specific conditions of the exemption were met. If the
41 ~~legislative body~~ DIRECTOR subsequently informs the legislative body that the
42 subdivision is being served by a water provider that has been designated by
43 the director as having an adequate water supply pursuant to section 45-108,
44 the legislative body shall record in the county recorder's office a statement
45 disclosing that fact.

1 O. If a municipality has not been given written notice by the director
2 of water resources pursuant to section 45-108, subsection H, the legislative
3 body of the municipality, to protect the public health and safety, may
4 provide by ordinance that, except as provided in subsections K and P of this
5 section, the final plat of a subdivision located in the municipality and
6 outside of an active management area will not be approved by the legislative
7 body unless the director of water resources has determined that there is an
8 adequate water supply for the subdivision pursuant to section 45-108 or the
9 subdivider has obtained a written commitment of water service for the
10 subdivision from a city, town or private water company designated as having
11 an adequate water supply by the director of water resources pursuant to
12 section 45-108. Before holding a public hearing to consider whether to enact
13 an ordinance pursuant to this subsection, a municipality shall provide
14 written notice of the hearing to the board of supervisors of the county in
15 which the municipality is located. A municipality that enacts an ordinance
16 pursuant to this subsection shall give written notice of the enactment of the
17 ordinance, including a certified copy of the ordinance, to the director of
18 water resources, the director of environmental quality, the state real estate
19 commissioner and the board of supervisors of the county in which the ~~city~~
20 **MUNICIPALITY** is located. If a municipality enacts an ordinance pursuant to
21 this subsection, water providers may be eligible to receive monies in a water
22 supply development fund, as otherwise provided by law.

23 P. Subsections J and O of this section do not apply to:

24 1. A proposed subdivision that the director of water resources has
25 determined will have an inadequate water supply pursuant to section 45-108 if
26 the director grants an exemption for the subdivision pursuant to section
27 45-108.02 and the exemption has not expired or if the director grants an
28 exemption pursuant to section 45-108.03.

29 2. A proposed subdivision that received final plat approval from the
30 municipality before the requirement for an adequate water supply became
31 effective in the municipality if the plat has not been materially changed
32 since it received the final plat approval. If changes were made to the plat
33 after the plat received the final plat approval, the director of water
34 resources shall determine whether the changes are material pursuant to the
35 rules adopted by the director to implement section 45-108. If the
36 municipality approves a plat pursuant to this paragraph and the director of
37 water resources has determined that there is an inadequate water supply for
38 the subdivision pursuant to section 45-108, the municipality shall note this
39 on the face of the plat.

40 Q. If the subdivision is composed of subdivided lands as defined in
41 section 32-2101 outside of an active management area and the municipality has
42 not received written notice pursuant to section 45-108, subsection H and has
43 not adopted an ordinance pursuant to subsection O of this section:

44 1. If the director of water resources has determined that there is an
45 adequate water supply for the subdivision pursuant to section 45-108 or if

1 the subdivider has obtained a written commitment of water service for the
2 subdivision from a city, town or private water company designated as having
3 an adequate water supply by the director of water resources pursuant to
4 section 45-108, the municipality shall note this on the face of the plat if
5 the plat is approved.

6 2. If the director of water resources has determined that there is an
7 inadequate water supply for the subdivision pursuant to section 45-108, the
8 municipality shall note this on the face of the plat if the plat is approved.

9 R. Every municipality is responsible for the recordation of all final
10 plats approved by the legislative body and shall receive from the subdivider
11 and transmit to the county recorder the recordation fee established by the
12 county recorder.

13 S. Pursuant to provisions of applicable state statutes, the
14 legislative body of any municipality may itself prepare or have prepared a
15 plat for the subdivision of land under municipal ownership.

16 T. The legislative bodies of cities and towns may regulate by
17 ordinance land splits within their corporate limits. Authority granted under
18 this section refers to the determination of division lines, area and shape of
19 the tracts or parcels and does not include authority to regulate the terms or
20 condition of the sale or lease nor does it include the authority to regulate
21 the sale or lease of tracts or parcels that are not the result of land splits
22 as defined in section 9-463.

23 U. For any subdivision that consists of ten or fewer lots, tracts or
24 parcels, each of which is of a size as prescribed by the legislative body,
25 the legislative body of each municipality may waive the requirement to
26 prepare, submit and receive approval of a preliminary plat as a condition
27 precedent to submitting a final plat and may waive or reduce infrastructure
28 standards or requirements except for improved dust-controlled access and
29 minimum drainage improvements.

30 Sec. 2. Section 11-809, Arizona Revised Statutes, is amended to read:

31 11-809. Review of land divisions: definitions

32 A. The board of supervisors of each county may adopt ordinances and
33 regulations pursuant to this section for staff review and approval of land
34 divisions of five or fewer lots, parcels or fractional interests, any of
35 which is ten acres or smaller in size. The county may not deny approval of
36 any land division that meets the requirements of this section. If review of
37 the request is not completed within thirty days after receiving the request,
38 the land division is considered to be approved. At its option, the board of
39 supervisors may submit a ballot question to the voters of the county to allow
40 the voters to determine the application of subsections B and C OF THIS
41 SECTION to qualifying land divisions in that county. NOTWITHSTANDING ANY
42 OTHER LAW, THE BOARD OF SUPERVISORS SHALL NOT ALLOW LAND DIVISIONS OF FIVE OR
43 FEWER LOTS, TRACTS OR PARCELS WITHOUT A WATER SUPPLY AS DETERMINED PURSUANT
44 TO SECTION 11-806.01, SUBSECTION B.

1 B. An application to split a parcel of land shall be approved if:

2 1. The lots, parcels or fractional interests each meet the minimum
3 applicable county zoning requirements of the applicable zoning designation.

4 2. The applicant provides a standard preliminary title report or other
5 acceptable document that demonstrates legal access to the lots, parcels or
6 fractional interests.

7 3. The applicant provides a statement from a licensed surveyor or
8 engineer, or other evidence acceptable to the county, stating whether each
9 lot, parcel or fractional interest has physical access that is traversable by
10 a two-wheel drive passenger motor vehicle.

11 4. The applicant reserves the necessary and appropriate utility
12 easements to serve each lot, parcel or fractional interest created by the
13 land division.

14 C. An application to split a parcel of land that does not comply with
15 one or more of the items listed in subsection B shall still be approved if
16 the applicant provides an acknowledgment that is signed by the applicant and
17 that confirms that no building or use permit will be issued by the county
18 until the lot, parcel or fractional interest has met the requirements of
19 subsection B. The county may grant a variance from one or more of the items
20 listed in subsection B.

21 D. Any approval of a land division under this section may:

22 1. Include the minimum statutory requirements for legal and physical
23 on-site access that must be met as a condition to the issuance of a building
24 or use permit for the lots, parcels or fractional interests.

25 2. Identify topographic, hydrologic or other site constraints,
26 requirements or limitations that must be addressed as conditions to the
27 eventual issuance of a building or use permit. These constraints,
28 requirements or limitations may be as noted by the applicant or through
29 county staff review, but there shall be no requirement for independent
30 studies.

31 E. If the requirements of subsections A through D do not apply, a
32 county may adopt ordinances and regulations pursuant to this chapter for
33 staff review of land divisions of five or fewer lots, parcels or fractional
34 interests but only to determine compliance with minimum applicable county
35 zoning requirements and legal access, and may grant waivers from the county
36 zoning and legal access requirements. The county may not deny approval of
37 any land division that meets the requirements of this section or where the
38 deficiencies are noticed in the deed. A county may not require a public
39 hearing on a request to divide five or fewer lots, parcels or fractional
40 interests, and if review of the request is not completed within thirty days
41 from receipt of the request, the land division shall be deemed approved. If
42 no legal access is available, the legal access does not allow access by
43 emergency vehicles or the county zoning requirements are not met, the access
44 or zoning deficiencies shall be noticed in the deed. If a county by
45 ordinance requires a legal access of more than twenty-four feet roadway

1 width, the county is responsible for the improvement and maintenance of the
2 improvement. If the legal access does not allow access to the lots, parcels
3 or fractional interests by emergency vehicles, neither the county nor its
4 agents or employees are liable for damages resulting from the failure of
5 emergency vehicles to reach such lot, parcel or fractional interest.

6 F. It ~~shall be~~ IS unlawful for a person or group of persons acting in
7 concert to attempt to avoid the provisions of this section or the subdivision
8 laws of this state by acting in concert to divide a parcel of land into six
9 or more lots or sell or lease six or more lots by using a series of owners or
10 conveyances. This prohibition may be enforced by any county where the
11 division occurred or by the state real estate department pursuant to title
12 32, chapter 20.

13 G. ~~In~~ FOR THE PURPOSES OF this section:

14 1. "Legal access" means a public right of vehicular ingress and egress
15 between the lots, parcels or fractional interests being created.

16 2. "Minimum applicable county zoning requirements" means the minimum
17 acreage and dimensions of the resulting lot, parcel or fractional interest as
18 required by the county's zoning ordinance.

19 3. "Utility easement" means an easement of eight feet in width
20 dedicated to the general public to install, maintain and access sewer,
21 electric, gas and water utilities.